

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: BAIR HUGGER FORCED AIR
WARMING DEVICES PRODUCTS
LIABILITY LITIGATION

MDL No. 15-2666 (JNE/FLN)

ORDER

This Document Relates To:

Case Nos.: 17-cv-2534 (*Duran v. 3M Co.*)
17-cv-3496 (*Aker v. 3M Co.*)
17-cv-3747 (*Jackson v. 3M Co.*)
17-cv-3848 (*Boughner v. 3M Co.*)
17-cv-4537 (*Echard v. 3M Co.*)
17-cv-4623 (*Guobadia v. 3M Co.*)

Defendants 3M Company and Arizant Healthcare, Inc., moved to dismiss eight member cases in the *Bair Hugger* MDL, including the above-captioned, for Plaintiffs' failure to comply with Pretrial Order No. 14 ("PTO 14," MDL Dkt. No. 117). Mot., MDL Dkt. No. 1239. Plaintiff Bobby Harms stipulated to dismissal with prejudice. 17-cv-2114 Dkt. No. 6. Defendants have withdrawn their Motion as to Plaintiff John T. Six (17-cv-1494). MDL Dkt. No. 1255.

The Court now decides the Motion as to the six above-captioned Plaintiffs. Plaintiffs must complete and serve Plaintiff Fact Sheets in lieu of interrogatories. *See* Dismissal Order 1-2 (July 24, 2017), MDL Dkt. No. 622. Because PTO 14 triggers express warnings of dismissal and gives plaintiffs opportunities to cure noncompliance, the Court may dismiss a case with prejudice if plaintiff has failed to comply with that Order despite those warnings and opportunities. Dismissal Order 1-3 (Dec. 21, 2017), MDL Dkt. No. 1028; *see* Fed. R. Civ. P. 41(b) (allowing dismissal for failure to comply with court orders). The Court may also dismiss a case for plaintiff's failure to prosecute.

Fed. R. Civ. P. 41(b). Defendants here have made an initial showing that the above-captioned Plaintiffs should be dismissed for failing to comply with PTO 14. MDL Dkt. Nos. 1126-27. So, to resist dismissal, these six Plaintiffs must oppose the Motion. *See* PTO 14 ¶ 8.

I. The Motion is granted as to the three Plaintiffs who did not respond to it.

Plaintiffs Mary Catherine Aker (17-cv-3496), Maxine Guobadia (17-cv-4623) and Deloise Jackson (17-cv-3747) did not respond to and so do not oppose the Motion. The Court thus **GRANTS** the Motion as to these three Plaintiffs and **DISMISSES** their cases with prejudice for failing to comply with PTO 14 and failing to prosecute.

II. The Motion is granted as to the three Plaintiffs who have stopped communicating with counsel and have not disputed the Motion's merits.

For Plaintiffs Roland Boughner (17-cv-3848), Connie Duran (17-cv-2534) and Audrey & Harry Echard (17-cv-4537), counsel responds to the Motion but does not dispute that these three Plaintiffs have failed to comply with PTO 14. To oppose the Motion, Plaintiffs must dispute its merits. *See* Dismissal Order 2 (July 24, 2017) (deeming counsel's log of "unsuccessful attempts to enlist [plaintiff's] cooperation" non-opposition), MDL Dkt. No. 622. Plaintiffs' counsel instead explains that these three Plaintiffs have stopped communicating with counsel:

Plaintiff	Case No.	Last Contact	MDL Dkt. No.
Boughner	17-cv-3848	"several months" ago	1249 ¶ 5
Duran	17-cv-2534	"several months" ago	1251 ¶ 5
Echard	17-cv-4537	before Dec. 2017	1248

This explanation does not go to the Motion's merits. So, these three Plaintiffs have not opposed the Motion, as they had to. The Court thus **GRANTS** the Motion as to these three Plaintiffs and **DISMISSES** their cases with prejudice for failing to comply with

PTO 14 and failing to prosecute.

Based on the files, records, and proceedings herein, IT IS SO ORDERED THAT:

1. Defendants 3M Company and Arizant Healthcare Inc.'s Motion to Dismiss for Failure to Comply with Pretrial Order No. 14 ("Motion") [Dkt. No. 1239] is GRANTED.
2. The following six cases are DISMISSED WITH PREJUDICE: 17-cv-2534 (*Duran v. 3M Co.*), 17-cv-3496 (*Aker v. 3M Co.*), 17-cv-3747 (*Jackson v. 3M Co.*), 17-cv-3848 (*Boughner v. 3M Co.*), 17-cv-4537 (*Echard v. 3M Co.*) and 17-cv-4623 (*Guobadia v. 3M Co.*).

Dated: May 22, 2018

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge